IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 8-6-2007

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

C.R.P.NPD No.2034 of 2003
and
CMP No.21325 of 2003
and
VCMP No.10899 of 2005

Rajeswari @ Linda ..
Petitioner/Petitioner 3rd Respondent

vs

1.Sadhu Lancontirth
2.Clause Danabeur
3.Atmaniketan Trust
represented by its President
Linda @ Rajeswari ..

Respondents/Respondents/Respondents

Civil revision petition filed under Article 227 of the Constitution of India against the order of the Rent Controller, Pondicherry, in EA No.20 of 2002 in RCEP No.21 of 2001 dated 15.12.2003.

For Petitioner : Mr.Bharath Chakravarthy for M./s Sai Bharath and Ilan

For Respondents : Mr.M.Ramamurthy for R1

ORDER

An order of the Rent Controller, Pondicherry, made in E.A.No.20 of 2002 pursuant to an order of eviction in HRCOP No.27/97 is the subject matter of challenge before this Court.

2.The Court heard the learned Counsel for the petitioner and also for the first respondent.

3.Admittedly, HRCOP No.27/97 was filed by the first respondent herein against the second respondent. Subsequently, the petitioner and the third respondent herein were also added while they claimed that they were the owners of the property. On enquiry, the Rent Controller thought it fit to pass an order of eviction and accordingly, ordered. It was challenged by the petitioner herein by filing an application under Sec.47 of the Civil Procedure Code stating that it was a nullity and unenforceable, and the execution petition should be dismissed.

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Then, an enquiry was made, and the learned Rent Controller dismissed the application. Hence, this revision before this Court.

4.Advancing his arguments on behalf of the petitioner, the learned Counsel would submit that in the instant case, the property actually belonged to the petitioner who is the wife of the first respondent; that there was no jural relationship between the petitioner and the first respondent-landlord; that this contention was raised; but, it was not looked into, and the order has been passed; that it was only a nullity; that so long as the order is null and void, it could be set aside by filing an application under Sec.47, which was accordingly done; but, the lower authority has not looked into that aspect of the matter, and hence, it has got to be set aside.

5.After careful consideration of the rival submissions made, and looking into the materials available, this Court is of the considered opinion that the order of the lower authority has got to be sustained since it does not require any interference in the hands of this Court. Admittedly, the HRCOP was filed by the first respondent against the second respondent/tenant. Even as per the agreement between the parties, the first respondent was the landlord, and the second respondent was the tenant. There was rental arrears from October 1992 to February 1997 amounting to Rs.40,000/- and odd at the rate of Rs.800/- per month. There was willful default. While the matter stood thus, the petitioner and the third respondent were impleaded. Originally, there was an order of eviction passed against them. It was not challenged either by the second respondent-tenant or by the other respondents in the HRCOP. Thus, it has become final. When the matter was put in execution by the party for recovery of possession of the property, the revision petitioner challenged the same by filing an application under Sec.47 putting forth all the untenable contentions.

6.Now, at this juncture, the contentions put forth by the learned Counsel for the petitioner have got to be discountenanced for more reasons than one. Firstly, the order that was passed in the HRCOP has become final and has not been challenged. Secondly, the revision petitioner was also a party to the HRCOP, and the order was also binding on her. The revision petitioner claims to be the wife of the landlord. But, there was divorce in the year 1992, which was an admitted fact, and the HRCOP was filed thereafter. It is further to be pointed out that the application under Sec.47 is not at all maintainable for the simple reason that the revision petitioner has been a party to the proceedings, against whom an order has been passed after consideration of all the contentions, and it is binding on her. That apart, the order has become final. Under the circumstances, in the instant case, no application could be entertained. The lower authority was perfectly correct in dismissing the application. All the contentions put forth both factual and legal, do not merit acceptance by the Court.

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7.Hence, this civil revision petition fails, and the same is dismissed. No costs. Consequently, connected CMP and VCMP are also dismissed.

nsv/

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To:
The Rent Controller
Pondicherry

_ one cc to M/s. Sai Bharath and Ilan Advocate sr no. 32921
+ one cc to Mr. M. Ramamurthy, Advocate sr no. 32726

BV(cO)
NM(13.06.07)

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